



California Fair Political Practices Commission

February 20, 1987

Wes Bannister
Huntington Beach
City Councilmember
15562 Chemical Lane
Huntington Beach, CA 92649

Re: Your Requests for Advice
Our File Nos. A-87-029 and
A-87-050

Dear Mr. Bannister:

This is in response to your requests for advice dated January 16, 1987 and February 3, 1987 concerning your duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. Are you prohibited from participating in discussions with the city attorney or with various department heads for the purpose of attempting to resolve a lawsuit filed against the City of Huntington Beach by a client of your insurance agency?

2. Are you prohibited from participating in a decision regarding rezoning land owned by a client of your insurance agency?

CONCLUSION

1. You may not participate in discussions with the city attorney or with city department heads for the purpose of attempting to resolve the lawsuit if the client has been a

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

source of income to you of \$250 or more in the preceding 12 months.

2. You may not participate in a decision regarding rezoning land owned by a client of your insurance agency if the client has been a source of income to you of \$250 or more in the preceding 12 months.

FACTS

In the first situation, a lawsuit has been filed against the City of Huntington Beach by John J. Stanko in his capacity as trustee of the Stanko Trust. The lawsuit involves the Davenport Marina, which is owned and operated by the Stanko Trust. You own a 100 percent interest in an insurance agency which insures the Davenport Marina.

In the second situation, a client of your insurance agency is coming before the city council to request that certain property be rezoned from commercial to residential property.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other things, a source of income aggregating two hundred fifty dollars (\$250) or more provided to, received by or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(c).) Since you own 100 percent of your insurance agency, all commission income to the insurance agency is attributed to you.^{2/} (Section 82030.) Accordingly,

^{2/} "Commission income" means gross payments received as a result of services rendered as a broker, agent, or other salesperson for a specific sale or similar transaction. (Regulation 18704.3(b).) However, any portion of the commission which is paid to a solicitor is not included as commission income to your insurance agency. (See, Carey Opinion, 3 FPPC Ops. 99 (No. 76-087, Nov. 3, 1977); copy enclosed.) Thus, if for example the sale of an insurance policy by a solicitor results in a \$400 commission which is split 50/50 between the solicitor and your insurance agency, your insurance agency has earned \$200 in commission income.

if the Stanko Trust or the client seeking the rezoning has provided \$250 or more in commission income to your insurance agency in the preceding 12 months, you may not participate in any decision which will have a reasonably foreseeable material financial effect on that client.

As we have previously advised you, it is usually necessary to estimate the dollar value of the effect of a decision on an official's economic interest to determine whether the effect is material. (Advice Letter to Wes Bannister, No. I-86-327 (Jan. 8, 1987).) However, Regulation 18702.1 sets out certain special situations in which an effect is considered material regardless of its dollar value. In particular, Regulation 18702.1(a)(1) provides that a public official shall not participate in a decision if:

(1) Any person (including a business entity) which has been a source of income (including gifts) to the official of \$250 or more in the preceding 12 months appears before the official in connection with the decision;

A person or business entity "appears before an official in connection with a decision" when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request;

(2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

Regulation 18702.1(b)(1) and (2).

Lawsuit

In the first situation you have presented, the lawsuit filed by Stanko Trust constitutes a "claim or similar request." Furthermore, Stanko Trust, through its agent John Stanko, is a named party in proceedings concerning the lawsuit. Therefore, you may not make, participate in making, or use your official position to influence a decision regarding the lawsuit if John Stanko or the Stanko Trust has been a source of income to you of \$250 or more in the preceding 12 months.

By participating in discussions with the city attorney and various department heads for the purpose of resolving the

Wes Bannister
February 20, 1987
Page 4

Stanko Trust lawsuit, you would be considered to be "using your official position to influence" a governmental decision regarding the lawsuit. (Regulation 18700.1(a), copy enclosed.)

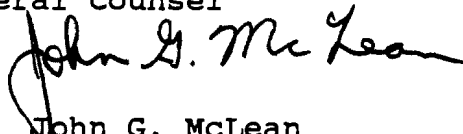
Rezoning

In the second situation you have presented, the request for rezoning constitutes an "application, ... appeal, or similar request." In addition, your client is undoubtedly a named party in the proceeding. Accordingly, you may not participate in the rezoning decision if the client has been a source of income to you of \$250 or more in the 12 months preceding the decision.

If you have any questions, please contact me at
(916) 322-5901.

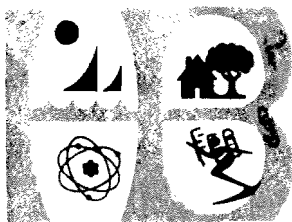
Sincerely,

Diane M. Griffiths
General Counsel



By: John G. McLean
Counsel, Legal Division

DMG:JGM:plh
Enclosure



City of Huntington Beach

P. O. BOX 190 • 2000 MAIN STREET • CALIFORNIA 92648

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Jack Kelly
MAYOR PRO TEMPORE
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COUNCILMEMBERS
Wes Bannister
Ruth Finley
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Tom Meys
Grace Winchell

February 3, 1987

Mr. John G. Mc Lean
Counsel, Legal Division
California Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95804-0807

Re: Reasons for Disqualification

Dear Mr. Mc Lean:

It is a little early yet, but some where during the course of the next year, one of my insureds is going to be coming before the City Council requesting a rezoning of land currently owned. The zoning on that land, at this point in time, is commercial and at any time, basically, the insured could start building commercial sites under that coding. The insured, however, is not in the commercial building business, but has always been, and historically has involved himself in, joint ventures involving residential. For that reason, they are asking for a rezone to residential.

Again let me review with you the points involving me, which would have a direct bearing on this situation.

First, whether the land is zoned for commercial or residential would mean no change in income to me or change in my agency's gross receipts. Our premiums for our insurance coverages are not based on zoning, but on square footages, or acres. Therefore the reason for disqualification, as I understand it from your letter is eliminated as far as my involvement is concerned. It would not exceed \$10,000 in gross receipts to my agency nor \$250.00 to me personally.

The next area, has to do with the benefit of the gross receipts to the insured. Presumably, and I have no reason to feel any differently about this fact, the change in the gross receipts to the insured would be little or no difference whether he built commercial or residential. Based upon that, and upon the rule that applies in that case, there would be little or no difference in the gross receipts to his firm and therefore no reason for disqualification there either. Based upon that information, I can see no reason for disqualification, however, you may want to review it more carefully and give me an opinion well in advance of this coming before us on our agenda. That will allow me to pin down any questions you might have or special facts that you would like to have before giving an official opinion from the FPFC.

Thank you very much for your help.

Sincerely,

Wes Bannister

WB/bu

cc: Gail Hutton
Huntington Beach City Attorney